

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Federal Communications Commission
Office of Secretary

In the Matter of)	
)	
Directv Enterprises, LLC)	File No. SAT-LOA-20030611-00115
For Authority to Launch and Operate)	
Directv 7S (USABBS-18))	
)	
and)	
)	
Request For Comment On Petitions)	Media Bureau Docket No. 03-82
Regarding Directv's DBS Service to)	
the States Of Alaska And Hawaii)	

COMMENTS OF
THE STATE OF HAWAII

The State of Hawaii ("the State"),¹ by its attorneys, hereby comments on the application of Directv to launch and operate its 7S satellite and, in so doing, provides additional comment on an *ex parte* basis regarding the Commission's investigation into Directv's failure to comply with its direct broadcast satellite ("DBS") service geographic service obligations.

The State is striving to remain optimistic about Directv's recent claims that it will end permanently the discriminatory treatment that it has imposed for nearly a decade on consumers in Hawaii. Directv's application to launch its 7S satellite states that the new satellite will "allow" Directv to expand its services in Hawaii through the addition of "approximately two dozen programming services" that are currently unavailable in the State.²

¹ The State herein comments through the Hawaii Department of Commerce and Consumer Affairs ("the Department"). A division of the Department – the Cable Television Division – is the State's cable franchise administrator.

² Directv 7S Application at 8. In a separate application, Directv indicated that it has already introduced a package of HDTV programming to Hawaii.

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The Commission should ensure that Directv follows through with this apparent promise by conditioning Directv's launch authorization on the rapid introduction of reasonably comparable DBS services in Hawaii, in part through the immediate provision of the missing 22 major programming services. The Commission should also condition Directv's launch authorization on Directv's compliance with the outcome of the Commission's ongoing investigation into Directv's geographic service requirements.

The need to condition explicitly Directv's authorization is demonstrated by Directv's recent *ex parte* filing in the Commission's companion proceeding addressing Directv's geographic service obligations. Directv argues in the filing that it already provides "'reasonably comparable' service to Hawaii in compliance with the Commission's rules" and also claims that it has "gone to great lengths to create comparable service offerings."³

This is a dramatically shift from Directv's previous acknowledgement that

Directv does not dispute that the programming choices offered to Hawaiian residents are more constrained than those offered to the mainland, but Directv submits that it offers the most expansive programming that it technically and economically feasible at this time.⁴

Directv also argues in its latest filing that it is "*unable* to provide identical service to the islands"⁵ (apparently misconstruing the Commission's "reasonably comparable" requirement), when in reality, Directv has previously acknowledged that it is "unwilling" to provide reasonably comparable programming to Hawaii because of its ongoing NRTC litigation.⁶ Directv further

³ *Ex Parte Response of Directv, Inc.*, MB Docket No. 03-82, IB Docket No. 98-21, at 2 (July 21, 2003) ("*Directv Response*").

⁴ *Opposition of Directv, Inc.*, MB Docket No. 03-82, IB Docket No. 98-21, at 11 (April 24, 2003) ("*Directv Opposition*").

⁵ *Directv Response* at 2.

⁶ *Id.* at 4-5.

claims that “as recently as 1999, Directv was unable to provide *any* services to Hawaii.”⁷ The fact that Directv refused to provide any DBS programming to Hawaii under the fall of 2000 (six years after Directv introduced DBS service in the mainland) provides further evidence of the DBS licensee’s open disregard for the Commission’s rules and cannot be used by Directv to justify its current provision of wholly inadequate programming packages to the State.

Finally, Directv suggests that “[i]deally, Hawaii would have approached Directv directly regarding these issues rather than seek relief at the Commission.”⁸ As Directv is well aware, the Director of the State’s Department of Commerce and Consumer Affairs sent a letter to Directv on September 26, 2002 requesting information about Directv’s future service plans for Hawaii.⁹ The State also sent similar letters to Directv on April 28, 2000, September 1, 1999 and July 23, 1999. Although Directv responded in writing to each of these inquiries, Directv never expressed any interest in working with the State to resolve the significant deficiencies in its services until after the State filed a formal complaint against Directv with the Commission.

The fact remains that the disparate mix of Spanish language, cartoon and other programming that Directv offers in Hawaii is not even remotely comparable to its programming packages in the mainland. The Commission affirmed this fact when it concluded in its *DBS Order* that “neither DBS provider offers a package of services to Alaska and Hawaii comparable

⁷ *Id.* at 1.

⁸ *Id.* at 10.

⁹ See Letter from Kathryn S. Matayoshi, Director, Department of Commerce and Consumer Affairs, State of Hawaii, to Steven J. Cox, Senior Vice President, New Ventures, Directv, Inc (Sept. 26, 2002).

to what the provider offers to CONUS.”¹⁰ Directv has introduced only marginal improvements to its Hawaii programming packages since the Commission made this observation.

Furthermore, it is unclear whether Directv’s other claimed improvements in its Hawaii service offerings are really taking place. For example, Directv claims that, among the 22 missing major programming channels, Directv already provides Disney Channel, C-SPAN and WGN to Hawaii consumers.¹¹ Directv also claims that it has corrected its website listing to reflect this fact.¹² A recent check by the State of Directv’s website, however, still indicates that Disney Channel, C-SPAN and WGN are all unavailable in Hawaii.¹³

Directv also still refuses to opine on why all of its major retail distributors are unwilling to carry Directv’s programming and services in their stores in Hawaii. Instead, Directv claims that a new business – Mountain Satellite – will begin distributing the DBS licensee’s services in Hawaii.¹⁴ The State is awaiting evidence from Directv regarding the existence of this new business.

Despite the shortcomings, the State remains encouraged by Directv’s recent claims that it is in the process of introducing significant improvements to the programming and services that it makes available to consumers in Hawaii. State officials have agreed to meet with representatives of Directv in August or September in order to discuss the details of Directv’s reported plans for

¹⁰ See *Policies and Rules for the Direct Broadcast Satellite Service*, FCC 02-110, ¶ 70 (June 13, 2002) (“*DBS Order*”).

¹¹ See *Directv Response* at 5 n.13 & 10.

¹² See *id.* at 11.

¹³ <http://www.directv.com/DTVAPP/learn/HawaiiChannels.jsp> (last visited July 30, 2003).

¹⁴ See *Directv Response* at 10.

improvement. The State will submit additional comments to the Commission as soon as these meetings are completed.

Meanwhile, the State is aware that the Commission needs to act on Directv's pending application to launch and operate its 7S satellite. The State believes that the Commission should grant Directv's application, but the Commission should also continue to maintain close scrutiny on the DBS provider. This should be done by explicitly conditioning Directv's launch authorization on promptly providing reasonably comparable DBS service in Hawaii, in part through the immediate provision of the 22 major programming channels that Directv claims to have withheld because of its litigation with NRTC. The Commission should also condition Directv's launch authorization on Directv's compliance with the outcome of the Commission's ongoing investigation into Directv's geographic service requirements.

Respectfully submitted,

THE STATE OF HAWAII

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CERTIFICATE OF SERVICE

I, Brenda E. Crutchfield, hereby certify that a copy of the foregoing **Comments of the State of Hawaii** has been served this 7th day of August 2003 by hand-delivery to the following:

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